

**OPINION**  
**65-437 (Oct 13)**

October 13, 1965            (OPINION)

Mr. Albert A. Wolf, State's Attorney

Burleigh County

RE: Townships - Organization - Zoning

This is in response to your letter in which you state that section 11-33-20 of the North Dakota Century Code allows a township to relinquish its power to enact its own regulations to the county by resolution of the Board of Township Supervisors. Section 58-03-11 and section 58-03-13 of the North Dakota Century Code allow township zoning commissions to be established by the Board of Township Supervisors. Section 58-01-01 sets forth the procedure for organizing a township. You then ask for an opinion on the following questions:

- (a) Where the County Board of Commissioners has acted on behalf of an unorganized township in bringing it into a county zoning commission, will the actions of the County Board constitute a relinquishment that is intended in 11-33-20, which would be binding on township Board of Supervisors if subsequent thereto a township were established, using the steps in Chapter 58-02?
- (b) Does the filing of a petition with the Board of County Commissioners for the organization of a township, signed by a majority of the legal voters of said township, require the Board to call the first township meeting as forth in 58-02-06, thereby establishing and organizing the township, or would such an issue be submitted to a vote of all the voters of the township before the township is organized and the officers are elected?
- (c) If a Board of Supervisors is elected, pursuant to the organization of a township in an area which has been unorganized and wherein the County Commissioners have relinquished the zoning powers to a County Zoning Commission, will the County Zoning Commission and its ordinances govern thereafter or will the township Board of Supervisors be able to revoke all County Zoning Commission ordinances and establish a new zoning ordinance in the township?"

After having reviewed the provisions of section 11-33-20 and the provisions of chapter 58-02 of the North Dakota Century Code, it is our opinion that the Board of County Commissioners could not act so as to constitute a relinquishment of the powers granted to a township. Under the provisions of section 58-02-01 a township is

organized when a majority of the legal voters of a congressional township is organized with an assessed valuation of more than \$40,000.00 and containing twenty-five or more legal voters petition the board of County Commissioners to be organized into a civil township. The civil township is created when such petition is submitted to the county commissioners and is found to be sufficient. In this respect it is observed that section 11-33-20 of the North Dakota Century Code provides that the township may relinquish its power to enact zoning regulations to the county by resolution of the Board of Township Supervisors. The Board of Township Supervisors cannot relinquish until same are properly organized and created.

As to your second question, it is the sufficiency of the petition as determined by the county commissioners and the meeting of the statutory requirements which constitute organizing a civil township. (See State v. Gang, 10 N.D. 331, 87 N.W. 5.)

It is therefore our opinion that the organization of a civil township is not dependent upon having the matter first submitted to the electorate before such township is organized. Neither is it necessary that the township officers be elected before the township is considered organized. In this respect, observe the language of section 58-02-06 which provides that the first township meeting of a newly organized township shall be held within twenty days after the township is organized.

In answer to your third question, we wish to restate that the county commissioners cannot act on behalf of a township, except in an unorganized township. It is observed that a civil township when organized is granted certain statutory powers which are not subject to any other conditions or restrictions. The statutory provisions under which a township is organized permits such township to function fully under the powers granted to the township, either to the electors or supervisors. It necessarily follows that the county commissioners cannot detract the powers given to a township nor can they act so as to bind the future actions of a duly organized township. The newly organized township may act within the statutory authority granted to the township. Their actions would be limited primarily by the due process clause rather than by an previous action taken by the county commissioners when the area was considered and deemed an unorganized township.

HELGI JOHANNESON

Attorney General